

UNITED STATES BANKRUPTCY COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

In re:

Case No. 15-46671

KEITH BRADLEY KRAMER,

Chapter 7

Debtor.

Judge Thomas J. Tucker

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**ORDER TO SHOW CAUSE WHY DEBTOR IS ELIGIBLE FOR A DISCHARGE**

**I. Introduction**

On April 28, 2015, the Debtor filed a voluntary petition for relief under Chapter 11, commencing this case. On August 24, 2015, this case was converted to Chapter 7. For the reasons stated below, it appears that the Debtor is not eligible for a discharge in view of 11 U.S.C. § 727(a)(8), which states:

(a) The court shall grant the debtor a discharge, unless . . . the debtor has been granted a discharge under this section, **under section 1141 of this title**, or under section 14, 371, or 476 of the Bankruptcy Act, in a case commenced within 8 years before the date of the filing of the petition[.]

11 U.S.C. § 727(a)(8) (emphasis added). Under § 727(a)(8), the Debtor is not eligible for a discharge in this Chapter 7 case, *if* the Debtor previously was granted a discharge under § 1141 (*i.e.*, in a Chapter 11 case) commenced within 8 years before the Debtor's filing of the petition in the current case.

**II. The Debtor's 2009 bankruptcy case**

It appears that the Debtor *was* granted a discharge under 11 U.S.C. § 1141 in the case of *In re Kramer*, Case No. 09-52903, which case was filed on April 24, 2009, within 8 years before the filing of this case on April 28, 2015. Kramer's 2009 case was jointly administered with the Chapter 11 case of *In re Kay Bee Kay Properties, LLC*, Case No. 09-52889 (the "lead case").

In the lead case, on November 25, 2009, the Debtors Keith Kramer and Kay Bee Kay Properties, LLC, filed their first proposed joint plan and disclosure statement, in a document entitled "Debtors' Combined Plan of Reorganization and Disclosure Statement" (Docket # 152 in the lead case, the "Plan"). That Plan stated in relevant part:

F.1 Discharge: **The confirmation of this Plan shall, and does hereby act to discharge and release the Claims of all Creditors**

**against the Debtors**, which shall constitute a full, total and complete settlement with said Creditors. Confirmation shall also act as a merger and relinquishment of any and all Claims that Creditors have or may have against the Debtors as provided in the treatment of the Creditors in Article I, and shall operate as a full satisfaction of such Claims.

(Docket # 152 in the lead case at 16 ¶ F.1 (emphasis added).) The foregoing language in the proposed Plan, in providing for a discharge *upon confirmation* of the individual debtor, Keith Kramer, departed from the default rule under Bankruptcy Code § 1141(d)(5)(A), that an individual debtor does not receive a discharge under Chapter 11 until all payments under the confirmed plan have been made.

Section 1141(d)(5)(A) states:

(5) In a case in which the debtor is an individual--

(A) unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan[.]

11 U.S.C. § 1141(d)(5)(A).

Construing the Plan as proposing a departure from the § 1141(d)(5)(A) default rule (under the “unless . . . the court orders otherwise” provision), the Court entered an order requiring the Debtors to file an amended plan and disclosure statement. (*See* Docket # 153 in the lead case (“Order Requiring Debtors to Amend Disclosure Statement,” filed on December 3, 2009 (the “December 3 Order”))). The December 3 Order stated, in relevant part:

If Debtors intend and wish to propose in the Plan that the Debtor Keith Bradley Kramer receive a discharge of any debt(s) upon confirmation of the Plan, notwithstanding 11 U.S.C. § 1141(d)(5)(A), Debtors must explicitly say so, and also must state that: “In the case of an individual debtor such as Debtor Keith Bradley Kramer, 11 U.S.C. § 1141(d)(5)(A) states that “unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan.”

(*Id.* at 2.)

The Debtors included the above language required by the December 3 Order in each of the amended joint plans they filed thereafter, including the Debtors' Fourth Amended Plan, which was ultimately confirmed. (Docket ## 154, 168, 170, 171 in the lead case). The Debtors' Fourth Amended Plan stated, in relevant part, regarding the "Effect of Confirmation":

**The confirmation of this Plan will act to discharge and release the Claims of all Creditors against the Debtor Keith B.**

**Kramer.** In the case of an individual debtor such as Debtor Keith B. Kramer, 11 U.S.C. § 1141(d)(5)(A) states that "unless after notice and a hearing the court orders otherwise for cause, confirmation of the plan does not discharge any debt provided for in the plan until the court grants a discharge on completion of all payments under the plan."

(Fourth Amended Plan (Docket # 171 in the lead case) at 18 ¶ G.1 (emphasis added).)

After holding a confirmation hearing on April 21, 2010, the Court entered an order confirming the Debtors' Fourth Amended Plan. That confirmation order was filed on April 21, 2010, and docketed on April 22, 2010. (Docket # 188 in the lead case). The confirmation order did not modify the provision in the Fourth Amended Plan, that granted Debtor Keith Kramer a discharge *upon confirmation*.

### **III. The Court's tentative conclusions, and the opportunity to respond to them**

From the foregoing, it appears that the Debtor Keith Kramer received a discharge under 11 U.S.C. § 1141, on April 22, 2010, in a case that was commenced within 8 years before the April 28, 2015 filing of this case. It therefore appears that the Debtor Keith Kramer is not eligible for a discharge in this case. *See* 11 U.S.C. § 727(a)(8).

But before entering an order denying the Debtor a discharge in this case, the Court will give the Debtor, and all other parties in interest, an opportunity to respond to this Show-Cause Order.

### **IV. Conclusion and order**

For the reasons stated above,

IT IS ORDERED that:

1. No later than March 28, 2016, the Debtor must file a written response to this Show-Cause Order.
2. No later than March 28, 2016, any party in interest, including the United States Trustee and

any creditor, may file a written response to this Show-Cause Order.

3. If the Debtor does not timely file a written response, as required by ¶ 1 above, the Court will construe that failure to mean that the Debtor does not oppose the entry of an order denying discharge in this case, based on 11 U.S.C. § 727(a)(8).
4. Unless the Court has entered an order denying discharge before March 30, 2016, the Debtor and the attorney for the Debtor must appear before this Court on **March 30, 2016 at 10:00 a.m.** in Courtroom 1925, and show cause why the Debtor is eligible for a discharge in view of 11 U.S.C. § 727(a)(8). Any other party in interest may also appear and be heard at this hearing, regarding the § 727(a)(8) discharge issue.
5. If the Court does enter an order denying discharge before March 30, 2016, the March 30, 2016 hearing will be deemed cancelled, as no longer necessary.

**Signed on March 15, 2016**

/s/ Thomas J. Tucker  
**Thomas J. Tucker**  
**United States Bankruptcy Judge**